



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ROCK HILL DIVISION**

GARY A. PARSON,  
Petitioner,

vs.

WARDEN, FCI-Estill  
Respondent.

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CIVIL ACTION N0:0:18-2123-MGL

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**ORDER ADOPTING THE REPORT AND RECOMMENDATION  
AND DISMISSING THE PETITION WITHOUT PREJUDICE  
AND WITHOUT REQUIRING RESPONDENT TO FILE AN ANSWER OR RETURN**

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Petitioner Gary A. Parson (Parson), who is self represented, filed this as a 28 U.S.C. § 2241 petition. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting the petition be dismissed without prejudice and without requiring Respondent Warden to file a return. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on August 29, 2018; and the Clerk filed Parson's objections on September 12, 2018. The Court has reviewed the objections, but holds them to be without merit. It will therefore enter judgment accordingly.

As the Magistrate Judge correctly observed, "Because [Parson] is foreclosed from bringing a § 2241 habeas petition in this [C]ourt to challenge his sentence, [his] remedy, if any, appears to be to seek permission to file a § 2255 motion in the court in which he was sentenced by filing a motion for leave to file a successive § 2255 motion in the Eleventh Circuit Court of Appeals. *See* 28 U.S.C. § 2255(h)." Report 4. For the reasons the Magistrate Judge sets out in the Report, the Court disagrees with Parsons arguments to the contrary. It need not recite the rationale a second time here.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Parson's objections, adopts the Report, and incorporates it herein. Therefore, it is the judgment of the Court the petition is **DISMISSED WITHOUT PREJUDICE** and without requiring Warden to file a return.

**IT IS SO ORDERED.**

Signed this 30th day of November, 2018, in Columbia, South Carolina.

s/ Mary Geiger Lewis  
MARY GEIGER LEWIS  
UNITED STATES DISTRICT JUDGE

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#### **NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this Order within sixty days from the date hereof, pursuant to the Federal Rules of Appellate Procedure.